

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:)	
)	
DIANA SPILKER ,)	
)	
Complainant,)	
)	
and)	CHARGE NO: 2003SA0129
)	EEOC NO: 21BA22880
EAGLE FOOD CENTERS,)	ALS NO: S12077
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

This matter comes to me on Respondent's Motion to Dismiss. Complainant did not file a response and indicated she did not intend to do so. Thus, this matter is ready for a decision.

Contentions of the Parties

Respondent asserts that this claim should be dismissed on the grounds of *res judicata* because Complainant received “no liability” discharge of this case from the U.S. Bankruptcy Court. Complainant’s position is not known.

Findings of Fact

The following facts were not the result of a credibility determination, but were derived from the uncontested facts in the record:

1. On July 16, 2002, Complainant filed a charge of discrimination with the Illinois Department of Human Rights.
2. On April 7, 2003, Respondent filed for bankruptcy reorganization under Chapter 11 of the U.S. Bankruptcy Code. **11 USC § 101 et seq.**
3. On May 29, 2003, the Illinois Department of Human Rights filed with the Commission a Complaint of Civil Rights Violation on Complainant’s behalf alleging that Complainant

was sexually harassed at work and constructively discharged in violation of section 2-102(D) of the Illinois Human Rights Act. **775 ILCS 5/2-102(D)**.

4. On June 6, 2003, Respondent filed its Schedule of Assets and Liabilities and Statements of Financial Affairs.

5. On July 29, 2003, Complainant filed her "Proof of Claim" with the bankruptcy court asserting a claim in the amount of \$50,000 for employment discrimination that occurred on January 18, 2002. Complainant's claim was listed as a general unsecured claim.

6. On October 30, 2003, Respondent filed its Verified Answer to the Complaint and also notified the Commission of the pending bankruptcy proceeding.

7. On November 3, 2003, this case was stayed pursuant to the automatic stay provisions of section 362 of the U.S. Bankruptcy Code. **11 USC §362(a)**.

8. On May 27, 2004, the U.S. Bankruptcy Court entered an Order dismissing Complainant's claim in its entirety on the basis of "no liability."

9. A "no liability" claim is one to which the debtor has no liability to the creditor.

10. On July 16, 2004, Respondent filed a Motion to Dismiss based on the "no-liability" discharge Order of the U.S. Bankruptcy Court. Complainant did not respond and further indicated in a status call that she did not intend to file a response.

Determination

This case should be dismissed under the principle of *res judicata* because a prior "no liability" discharge of Complainant's listed claim by a bankruptcy court operates as a bar to further litigation of that claim before the Commission.

Conclusions of Law

1. The Illinois Human Rights Commission has jurisdiction over the parties and the subject matter in this case.

2. Complainant is an "employee" as defined by the Illinois Human Rights Act. **775 ILCS 5/2-101(A)(1)(a)**.

3. Respondent is an "employer" as defined by the Illinois Human Rights Act. **775 ILCS 5/2-101(B)(1)(a).**

4. The doctrine of *res judicata* bars re-litigation of a case where a court of competent jurisdiction has issued a final decision on the merits of the case.

5. The "no liability" discharge order issued by the U.S. Bankruptcy Court constituted a decision on the merits of this case by a court of competent jurisdiction.

Discussion

The issue presented in this case is whether a claim before the Commission remains viable after being discharged by the bankruptcy court on the basis of a "no liability" finding, or whether it constitutes a decision on the merits and is barred by the doctrine of *res judicata*. Respondent argues in its motion that the bankruptcy court's disallowance of Complainant's claim on the basis of "no liability" operates as a bar to further proceedings before the Commission under the legal doctrine of *res judicata*. Complainant's position is not known because she did not respond to the motion.

In order to apply the doctrine of *res judicata* in this case, three elements must be satisfied. First, there must be a common identity of the parties or their privies. Second, there must be a common identity of the cause of action; and third, there must be a final judgment on the merits rendered by a court of competent jurisdiction. **Schilhavy and Board of Governors of State Colleges and Universities**, ___ Ill. HRC. Rep ___, (1992SF0474, August 22, 2002). It is undisputed in the record that both the parties and the issues are identical in the federal bankruptcy action and the instant case. Thus, the question is whether a "no liability" discharge by the court is a final judgment on the merits of the instant case.

A review of relevant precedent revealed that this is not an issue of first impression before the Commission. In fact, the Commission considered a similar issue in **Turner and Clark Oil Refining Corp.**, ___ Ill. HRC. Rep. ___, (Order and Decision

1986CF1180, November 22, 1993), where the bankruptcy court extinguished a complainant's listed employment discrimination claim. There, as in the instant case, the respondent argued that *res judicata* operated as a bar to further litigation before the Commission and the administrative law judge agreed noting that "courts consistently found that a discharge order is binding on all types of creditors." See, Turner slip op. at 3 (Recommended Order and Decision 1986CF1180, September 10, 1993.) Here, our Complainant was listed as a creditor in Respondent's bankruptcy proceeding and valued her employment discrimination claim at \$50,000. However, upon an unopposed motion by Respondent, the court discharged her claim and indicated that Respondent owed no liability to Complainant. That finding by its very definition constituted a decision on the merits barring Complainant from seeking any monetary relief from the Commission.

While it is true that Complainant could still have a claim for equitable relief before the Commission (such as a Cease and Desist Order prohibiting Respondent from further violating the Act), like the complainant in Turner, she did not express interest in that sort of relief. She did not raise that issue in the conference call that I held with the parties to determine how Complainant would proceed and she did not file a written response requesting any relief, equitable or otherwise. Therefore, Complainant's lack of any response can be deemed as acquiescence with Respondent's motion to dismiss this claim. See, Turner slip op. at 4.

In sum, the federal court has held, and the Commission has followed, that "if a claim is submitted to, and rejected by, a bankruptcy court and no appeal is taken, the bankruptcy court's decision is *res judicata* and bars further litigation before the Commission. Id at 4 citing, Katchen v. Landy, 382 U.S. at 323, 334 (1966). There is no evidence before me that Complainant appealed the bankruptcy court's decision and Complainant has provided no reason why this case should not be dismissed based on

the discharge of the underlying discrimination claim. Thus, Complainant's case is barred by *res judicata* and must be dismissed.

Recommendation

Based on the above findings of fact and conclusions of law I recommend that this case be dismissed with prejudice.

ILLINOIS HUMAN RIGHTS COMMISSION

KELLI L. GIDCUMB
Administrative Law Judge
Administrative Law Section

ENTERED THIS 16TH DAY OF SEPTEMBER, 2004.